

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JAMES C. RAMSEY</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 165,535 & 165,536
<b>MITCHELL COUNTY</b>	)	
Respondent	)	
AND	)	
	)	
<b>TRAVELERS INSURANCE COMPANY</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

On April 15, 1997, the application of respondent for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Bruce E. Moore on November 5, 1996, came on for oral argument.

**APPEARANCES**

Claimant appeared not, having resolved his dispute with respondent by Joint Petition and Stipulation dated August 20, 1994. Respondent and its insurance carrier appeared by their attorney, Jerry M. Ward of Great Bend, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Richard L. Friedeman of Great Bend, Kansas . There were no other appearances.

**RECORD AND STIPULATIONS**

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board. In addition, the Appeals Board considered the medical reports of Gary L. Harbin, M.D., Dr. Carrico, and J. M. Mohler, M.D.,

as well as the four-page statement submitted by claimant, all as stipulated by the parties on February 29, 1996.

**ISSUES**

- (1) Whether claimant suffered an accidental injury on the dates alleged.
- (2) Whether claimant's accidental injuries arose out of and in the course of his employment on the dates alleged.
- (3) Whether claimant provided notice to the respondent and if not whether respondent was prejudiced thereby.
- (4) The liability of the Kansas Workers Compensation Fund.
- (5) The appropriate apportionment of the Award between the injuries alleged.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are both accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein as to the issues raised.

At oral argument the attorney for respondent agreed that the evidence regarding the alleged series of accidents from August 16, 1991, through September 20, 1991, does not support a finding that claimant suffered accidental injury during these periods. Respondent instead contends that the entire liability in this matter as well as the basis for Fund liability hinges upon the specific incident occurring on August 16, 1991. As such, the request for an assessment of Fund liability in Docket 165,535 is denied.

The Appeals Board next considers what, if any, liability extends to the Workers Compensation Fund for the injury suffered in Docket No. 165,536 on August 16, 1991. The Administrative Law Judge found claimant's testimony to be unsupported by the record regarding the specific incident alleged on that date. Claimant contends he was carrying a heavy barricade with another worker when his right shoulder gave out causing claimant to fall, sustain injury to his left shoulder, right shoulder, neck, and low back, and to develop carpal tunnel syndrome. During this same incident claimant alleged a coworker was injured, suffering an 8 to 10-inch cut on his belly.

Medical evidence presented indicates that claimant gave conflicting histories to at least two different doctors subsequent to the August 16, 1991, alleged incident. The medical reports of Dr. Harbin and Dr. Carrico which were stipulated into evidence do not support a finding that claimant's injury occurred in the manner alleged. Likewise a four-page handwritten note from claimant which was created sometime between August 23, 1991, and September 20, 1991, fails to elude to any injury occurring on August 16, 1991. While it does discuss multiple dates of injury going back as far as 1989, the specific incident of August 16, 1991, alleged by claimant is never mentioned.

The first notice respondent had of this alleged incident was on approximately September 13, 1991. Claimant's supervisor, Raymond Gritman, was made aware of the alleged August 16th incident only through the later reports of claimant. He had no personal knowledge of the specific incidents and was unaware of any coworker suffering any injury as described.

When attempting to pass liability on to the Kansas Workers Compensation Fund, the employer has the burden of proving all of the elements necessary to establish Fund liability. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984). A key element which much be proven before Fund liability can be established is the fact that a handicapped employee suffers an "injury" which probably or most likely would not have occurred but for a preexisting physical or mental impairment. See K.S.A. 1991 Supp. 44-567(a)(1). In this instance, the Appeals Board finds that respondent has failed to prove that the incident which is alleged to have occurred on August 16, 1991, actually did occur. Without evidence of an accident occurring on that date, the "but for" evidence established by respondent becomes irrelevant. As such the Appeals Board finds that the Award of the Administrative Law Judge finding that respondent has failed to sustain its burden of proof as to any basis for Fund liability, and assessing 100 percent of the liability in these cases against the respondent should be, and is hereby, affirmed.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Bruce E. Moore dated November 5, 1996, should be, and is hereby, affirmed and respondent is denied any reimbursement from the Kansas Workers Compensation Fund as a result of the injuries alleged.

The fees necessary defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent to be paid as follows:

Underwood and Shane	
Preliminary Hearing Transcript	\$395.90
Dated October 1, 1992	
 Deposition of Dr. C. Reiff Brown	 \$176.50
Dated December 14, 1994	

Owens, Brake & Associates Preliminary Hearing Transcript Dated December 1, 1992	\$110.30
Preliminary Hearing Transcript Dated February 18, 1993	\$116.11
Transcript of Proceedings Dated February 11, 1994	\$136.90
Deposition of Raymond Gritman Dated October 5, 1994	\$231.95
Kelley, York & Associates, Ltd. Deposition of Dr. Ernest Schlachter Dated March 8, 1995	\$209.91
Debra Richecky, C.S.R. Regular Hearing Transcript Dated July 6, 1995	\$109.55

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 1997.

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BOARD MEMBER

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c: Jerry M. Ward, Great Bend, KS  
Richard L. Friedeman, Great Bend, KS  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Director